

1 ADAM GORDON
2 United States Attorney
3 JANET A. CABRAL
4 Assistant United States Attorney
5 Cal. Bar No. 168900
6 SHELDON A. SMITH
7 Special Assistant United States Attorney
8 New Jersey Bar No. 041482009
9 Office of the U.S. Attorney
10 880 Front Street, Room 6293
11 San Diego, CA 92101-8893
12 Telephone: (619) 546-8715/7304
13 Email: janet.cabral@usdoj.gov
14 sheldon.smith@usdoj.gov

15 Attorneys for Respondents

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 NAM NGOC TRAN,

19 Case No.: 25-cv-2366-AGS-KSC

20 Petitioner,

21 **RESPONDENTS' RESPONSE IN**
22 **OPPOSITION TO PETITIONER'S**
23 **AMENDED HABEAS PETITION**

24 v.

25 CHRISTOPHER J. LaROSE, et al.,

26 Respondents.

27

28

I. INTRODUCTION

Petitioner has filed an amended habeas petition and a motion for temporary restraining order. For the reasons set forth below, the Court should deny Petitioner's request for interim relief and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Vietnam. On August 3, 1981, Petitioner was admitted into the United States as a lawful permanent resident. On July 29, 2010, Petitioner was convicted in this district of distributing a controlled substance in violation of 21 U.S.C. § 841(a)(1). On October 28, 2010, an immigration judge ordered Petitioner removed to Vietnam. Declaration of Hugo Lara-Ramirez (Lara-Ramirez Decl.) at ¶ 4. On November 16, 2010, Petitioner was released from immigration custody on an Order of Supervision. Lara-Ramirez Decl. at ¶ 5.

On August 12, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect his removal to Vietnam. *See* ECF 5, pp. 15-18. On September 8, 2025, the San Diego ERO field office started the process of obtaining Petitioner's foreign identity documents. Lara-Ramirez Decl., at ¶ 8. On September 11, 2025, San Diego ERO field office submitted foreign documents for certified English translation to submit with a request for travel documents (TD). On September 22, 2025, the San Diego ERO field office submitted a request for Petitioner's TD from Vietnam to the ERO Headquarters Removal and International Operations (RIO), which included Petitioner's birth certificate. *Id.*, at ¶¶ 10-11. ICE expects to receive the TD by the end of October 2025. *Id.*, at ¶ 12.

ICE is routinely obtaining TDs from Vietnam and able to arrange travel itineraries to execute final orders of removal for Vietnamese citizens. *Id.* at ¶ 15. Since mid-February 2025, ICE has obtained TDs for Vietnamese citizens who immigrated to the United States. *Id.*, at ¶ 14. ICE removed at least 587 Vietnamese citizens to Vietnam in fiscal year 2025, including 324 individuals who immigrated to the United States

1 before Jul 12, 1995. *Id.*, at ¶ 16. Once Petitioner's TD is obtained, ICE will arrange for
2 his prompt removal to Vietnam. *Id.* at ¶ 19.

3 III. ARGUMENT

4 A. Petitioner's Claims Regarding Third Countries Are Unfounded

5 The Constitution limits federal judicial power to designated "cases" and
6 "controversies." U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*,
7 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a
8 "case" or "controversy" within the meaning of Article III). "Absent a real and
9 immediate threat of future injury there can be no case or controversy, and thus no Article
10 III standing for a party seeking injunctive relief." *Wilson v. Brown*, No. 05-cv-1774-
11 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
12 *Earth, Inc. v. Laidlow Env't Servs., Inc.*, 528 U.S. 167, 190 (2000) ("[I]n a lawsuit
13 brought to force compliance, it is the plaintiff's burden to establish standing by
14 demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful
15 behavior will likely occur or continue, and that the threatened injury is certainly
16 impending."). At the "irreducible constitutional minimum," standing requires that
17 Plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the
18 challenged action of the United States and (3) likely to be redressed by a favorable
19 decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

20 Here, Respondents are not seeking to remove Petitioner to a third country. *See*
21 Lara-Ramirez Decl. As such, there is no controversy concerning third country
22 resettlement for the Court to resolve. Federal courts do not have jurisdiction "to give
23 opinion upon moot questions or abstract propositions, or to declare principles or rules
24 of law which cannot affect the matter in issue in the case before it." *Church of*
25 *Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). "A claim is moot if it has
26 lost its character as a present, live controversy." *Rosemire Neighborhood Ass'n v. U.S.*
27 *Env't Prot. Agency*, 581 F.3d 1169, 1172-73 (9th Cir. 2009). The Court therefore lacks
28 jurisdiction over Petitioner's claims concerning third country resettlement because there

1 is no live case or controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see*
2 *also Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

3 Moreover, the Court does not have jurisdiction over such claims because
4 Petitioner has not raised them in his habeas petition. This Court “does not have the
5 authority to issue an injunction based on claims not pled in the complaint.” *See LA*
6 *Alliance for Hum. Rts. v. Cnty. of Los Angeles*, 14 F.4th 947, 957 (9th Cir. 2021)
7 (cleaned up); *Omega World Travel, Inc. v. Trans World Airlines*, 111 F.3d 14, 16 (4th
8 Cir. 1997) (“The purpose of interim equitable relief is to protect the movant, during the
9 pendency of the action, from being harmed or further harmed in the manner in which
10 the movant contends it was or will be harmed *through the illegality alleged in the*
11 *complaint.*” (emphasis added)); *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994)
12 (“[A] party moving for a preliminary injunction must necessarily establish a
13 relationship between the injury claimed in the party’s motion and the conduct asserted
14 in the complaint.”); *Colvin v. Caruso*, 605 F.3d 282, 300 (6th Cir. 2010) (“[The
15 plaintiff] had no grounds to seek an injunction pertaining to allegedly impermissible
16 conduct not mentioned in his [operative] complaint.”).

17 **B. Petitioner’s Claims and Requests are Barred by 8 U.S.C. § 1252**

18 Petitioner bears the burden of establishing that this Court has subject matter
19 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,
20 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a
21 threshold matter, Petitioner’s claims are jurisdictionally barred under 8 U.S.C.
22 § 1252(g). Courts lack jurisdiction over any claim or cause of action arising from any
23 decision to commence or adjudicate removal proceedings or execute removal orders.
24 *See 8 U.S.C. § 1252(g)* (“Except as provided in this section and *notwithstanding any*
25 *other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or*
26 *any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court
27 shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising
28 from the decision or action by the Attorney General to commence proceedings,

1 adjudicate cases, or *execute removal orders* against any alien under this chapter.”)
2 (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483
3 (1999) (“There was good reason for Congress to focus special attention upon, and make
4 special provision for, judicial review of the Attorney General’s discrete acts of
5 “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—
6 which represent the initiation or prosecution of various stages in the deportation
7 process.”). In other words, § 1252(g) removes district court jurisdiction over “three
8 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
9 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482
10 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action
11 by the Attorney General to . . . execute removal orders,” over which Congress has
12 explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). The Court should
13 dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.¹

14 **C. Petitioner’s Detention is Lawful**

15 Petitioner is lawfully detained under 8 U.S.C. § 1231(a). Petitioner was re-
16 detained by ICE on August 12, 2025, for the purpose of executing the October 28, 2010
17 final order of removal. Lara-Ramirez Decl., at ¶ 6. Respondents are working
18 expeditiously to acquire the necessary travel document to effectuate Petitioner’s
19 removal to Vietnam. The Amended Petition appears to raise no claim that the length of
20 Petitioner’s detention constitutes “indefinite detention” in violation of the principles set
21 forth in *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

22 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a
23 final order of removal is governed by 8 U.S.C. § 1231(a), which provides that “the
24 Attorney General shall remove the alien from the United States within a period of 90
25 days,” and “[i]f the alien does not leave or is not removed within the removal period,

27
28 ¹ Respondents acknowledge that most Courts to address the issue have found that they
have jurisdiction to address claims like those set forth in the Amended Petition.

1 the alien, pending removal, shall be subject to supervision under regulations prescribed
2 by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8
3 U.S.C. § 1231(a)(6).

4 An Order of Supervision may be issued under 8 C.F.R. § 241.4, and the order
5 may be revoked under section 241.4(l)(2)(iii) where “appropriate to enforce a removal
6 order or to commence removal proceedings against an alien.” *See also* 8 C.F.R. § 241.5
7 (Conditions of release after removal period). It is also provided in 8 C.F.R.
8 § 241.13(i)(2) that the Order of Supervision may be revoked to effect a removal due to
9 changed circumstances, particularly where ICE has determined that there is a significant
10 likelihood of removal in the reasonably foreseeable future. Here, Petitioner was re-
11 detained by ICE on August 12, 2025, for the purpose of executing the October 28, 2010
12 final order of removal. Petitioner is lawfully detained.

13 **D. Petitioner’s Complaints About Procedural Deficiencies in His Re-detention
14 Do Not Establish a Basis for Habeas Relief**

15 The Amended Petition seeks relief based upon an alleged failure by ICE to
16 comply with 8 C.F.R. § 241.13(f) and (i)(2). Petitioner alleges that he was not told of
17 the reason why his order of supervision was revoked and has not been permitted an
18 informal interview to contest the reasons for the revocation. Even if true, Petitioner is
19 not entitled to relief in this petition.

20 If, after a noncitizen has been ordered removed from the United States, a
21 determination is made that there is no significant likelihood of removal to the country
22 to which he or she was ordered removed within the reasonably foreseeable future, the
23 individual may be released on an order of supervision. 8 C.F.R. § 241.13(a) and (g).
24 Release on an order of supervision may be revoked, and the individual returned to
25 custody, “if, on account of changed circumstances, the Service determines that there is
26 a significant likelihood that the alien may be removed in the reasonably foreseeable
27 future.” 8 C.F.R. § 231.13(l)(2). “Upon revocation, the alien will be notified of the
28 reasons for the revocation of his or her release” and the agency is to “conduct an initial
informal interview promptly after his or her return to Service custody to afford the alien

1 an opportunity to respond to the reasons for revocation” Importantly, the regulations
2 provide no mechanism for any further review if the individual disputes the reasons for
3 revocation.

4 Here, prior to Petitioner’s detention, on August 9, 2025, ICE issued a warrant for
5 his arrest based on a determination that he is removable under United States
6 immigration law. Exhibit 1, Warrant for Arrest dated 8-9-25.² Upon his detention,
7 Petitioner was provided a Warrant of Removal and Warning to Alien Ordered Removed
8 or Deported. Exhibits 2 and 3. Contrary to Petitioner’s contentions in the Amended
9 Petition, nothing in § 231.13(l)(2) requires the agency to provide a particular document
10 titled “written notice.” The Warrant for Arrest issued prior to Petitioner’s detention
11 reflects the agency’s determination it was again appropriate to detain Petitioner to effect
12 his removal. The Warrant of Removal and Warning to Alien provided Petitioner with
13 notice that he was being re-detained for purposes of removal. No more particularized
14 notice was required to be given.

15 But even assuming the agency’s compliance with the relevant regulations fell
16 short, Petitioner has not established prejudice. *See Cmty. Legal Servs. in E. Palo Alto v.*
17 *United States Dep’t of Health & Hum. Servs.*, 780 F. Supp. 3d 897, 921 (N.D. Cal.
18 2025) (To establish an APA claim under the *Accardi* doctrine, Plaintiffs must show both
19 that (1) the Government violated its own regulations, and (2) Plaintiffs suffer substantial
20 prejudice as a result of that violation.”). At the time of his re-detention, Petitioner knew
21 he was subject to a final order of removal to Vietnam. And because Petitioner does not
22 even appear to dispute in his Amended Petition that there is a significant likelihood that
23 Petitioner will be removed to Vietnam in the reasonably foreseeable future, any
24 challenge that Petitioner would have raised under the regulations would have failed.
25 *See, e.g., United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding

27
28

² The attached documents are true and correct copies, with redactions of private
information, of records received from ICE counsel.

1 that even assuming that the judge had violated the rule by failing to inquire into the
2 alien's background, any error was harmless because there was no showing that the
3 petitioner was qualified for relief from deportation).

4 Moreover, Petitioner does not have a protected liberty interest in remaining free
5 from detention where ICE has exercised its discretion under a valid removal order and
6 its regulatory authority. *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445,
7 at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a
8 violation of their procedural due process rights and noting, "[Petitioners] fail to point to
9 any constitutional, statutory, or regulatory authority to support their contention that they
10 have a protected interest in remaining at liberty in the United States while they have
11 valid removal orders."). "While the regulation provides the detainee some opportunity
12 to respond to the reasons for revocation, it provides no other procedural and no
13 meaningful substantive limit on this exercise of discretion as it allows revocation
14 "when, in the opinion of the revoking official ... [t]he purposes of release have been
15 served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release
16 would no longer be appropriate." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir.
17 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§
18 241.4(l)(2)(i), (iv) (emphasis in original).

19 In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's
20 release but did not provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL
21 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D.
22 Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful
23 because, he contended, the federal regulations prohibited re-detention without, among
24 other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that
25 although the regulations called for an informal interview, petitioner could not establish
26 "any actionable injury from this violation of the regulations" because the government
27 had procured a travel document for the petitioner, and his removable was reasonably
28 foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of

1 Massachusetts held that even if the ICE detainee petitioner had not received a timely
2 interview following her return to custody, there was “no apparent reason why a violation
3 of the regulation … should result in release.” *Doe v. Smith*, 2018 WL 4696748, at *9
4 (D. Mass. Oct. 1, 2018). The court elaborated, “[I]t is difficult to see an actionable injury
5 stemming from such a violation. Doe is not challenging the underlying justification for
6 the removal order.... Nor is this a situation where a prompt interview might have led to
7 her immediate release—for example, a case of mistaken identity.” *Id.*

8 The same is true here. Had Petitioner been provided with a written notice at the
9 time of his re-detention, explicitly telling him that the agency believed there were
10 changed circumstances in that individuals were now being regularly removed to
11 Vietnam such that there was a significant likelihood of his removal in the reasonably
12 foreseeable future, he could have requested an opportunity to respond to that assertion.
13 But since mid-February of 2025, ICE has been obtaining TDs for Vietnamese citizens
14 to be removed to Vietnam. Lara-Ramirez Decl., ¶ 14. ICE removed 587 Vietnamese
15 citizens to Vietnam in fiscal year 2025, which ended approximately a month and a half
16 after Petitioner was detained. At the time Petitioner was re-detained on August 12, 2025,
17 there was a significant likelihood of his removal to Vietnam in the reasonably
18 foreseeable future pursuant to the valid order of removal. Petitioner cannot demonstrate
19 substantial prejudice rising to the level of a due process violation.

20 Further, whatever procedural deficiencies or delays may have occurred, they do
21 not warrant Petitioner’s release and, indeed, could be cured by means well short of
22 release. Should the Court find it necessary and appropriate, the agency could be ordered
23 to provide Petitioner with a written notice at this time explicitly telling him that the
24 reason he was re-detained was because there was a changed circumstance – that there
25 is now a significant likelihood of his removal in the reasonably foreseeable future.
26 Release from custody is not an appropriate remedy.

27
28

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the application for a temporary restraining order and dismiss the habeas petition.

DATED: October 24, 2025

ADAM GORDON
United States Attorney

s/ Janet A. Cabral
JANET A. CABRAL
Assistant United States Attorney
Attorneys for Respondents

1 ADAM GORDON
2 United States Attorney
3 SHELDON A. SMITH
4 Special Assistant United States Attorney
5 New Jersey Bar No. 041482009
6 Office of the U.S. Attorney
7 880 Front Street, Room 6293
8 San Diego, CA 92101-8893
9 619-546-7304
10 sheldon.smith@usdoj.gov

11 Attorneys for Respondents

12
13
14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 NAM NGOC TRAN,

17 Case No. 25-cv-2366-AGS-KSC

18 Petitioner,

19 v.
20 CHRISTOPHER J. LaROSE, et al.,

21
22 **DECLARATION OF HUGO LARA-**
23 **RAMIREZ IN SUPPORT OF**
24 **RESPONDENTS' RESPONSE IN**
25 **OPPOSITION TO PETITIONER'S**
26 **AMENDED HABEAS PETITION**

27 Respondent.

28 I, Hugo Lara-Ramirez, do hereby declare:

1. I am employed by the U.S. Department of Homeland Security (DHS),
2. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations
3. (ERO), in the San Diego Field Office, as a Deportation Officer (DO). I have held this
4. position since May 2024.

5. I am currently assigned to the Otay Mesa suboffice and my responsibilities
6. include enforcing final orders of deportation and removal from the United States for aliens
7. and requesting travel documents from foreign consulates as part of the removal process. I
8. am familiar with the repatriation of Vietnamese nationals.

1 3. I am currently responsible for monitoring this case. I make this declaration
2 based upon my own personal knowledge and experience as a law enforcement officer and
3 information provided to me in my official capacity as a DO in the ICE ERO San Diego Field
4 Office. I make this declaration based on review of Petitioner Nam Ngoc Tran's alien file
5 (A [REDACTED]), consultation with other ICE officers, and review of official documents and
6 records maintained by ICE.

7 4. On October 28, 2010, Petitioner was ordered removed to Vietnam. At that
8 time, ICE started the process of effectuating removal.

9 5. On November 17, 2010, Petitioner was released from ICE custody under an
10 Order of Supervision because ICE was unable to obtain a travel document.

11 6. On August 12, 2025, ICE re-detained Petitioner to execute his removal order.

12 7. To effectuate Petitioner's removal to Vietnam, ERO must acquire a travel
13 document and schedule a flight for Petitioner. Since Petitioner's re-detention, ERO has
14 worked expeditiously to effectuate Petitioner's removal to Vietnam.

15 8. On September 8, 2025, the San Diego ERO field office started the process of
16 obtaining Petitioner's foreign identity documents.

17 9. On September 11, 2025, the San Diego ERO field office submitted foreign
18 documents for certified English translation to submit with a request for travel documents.

19
20 10. On September 22, 2025, the San Diego ERO field office submitted a request
21 for Petitioner's travel document from Vietnam to the ERO Headquarters Removal and
22 International Operations (RIO).

23 11. The request included the documentation that Vietnam requires to issue a TD,
24 including Petitioner's Vietnamese birth certificate.

25 12. The TD request remains pending and ICE expects to receive Petitioner's TD
26 by the end of this month, October 2025.

27 13. Since Petitioner was re-detained in May 2025, Vietnam has not denied a
28 request from ICE for his TD.

14. Since mid-February 2025, ICE has obtained TDs for Vietnamese citizens who immigrated to the United States before 1995.

15. ICE routinely obtains travel documents for Vietnamese citizens, including those who immigrated to the United States before 1995.

16. In fiscal year 2025, ICE has removed at least 587 Vietnamese citizens to Vietnam. Of those 587 removed, 324 were Vietnamese citizens who immigrated to the United States before July 12, 1995, like Petitioner.

17. ICE has removed Vietnamese citizens to Vietnam as recently as September 2025.

18. ICE routinely has flights to Vietnam.

19. Once ICE receives a travel document for Petitioner, his removal can be effectuated promptly.

20. Based on my experience, ICE's success with obtaining TDs from Vietnam, and knowledge of this case, there is a significant likelihood of Petitioner's removal in the on or before December 1, 2025.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 23rd day of October 2025.

HUGO I LARA RAMIREZ

Hugo Lara-Ramirez
Deportation Officer
San Diego Field Office